STATE TRUST LANDS

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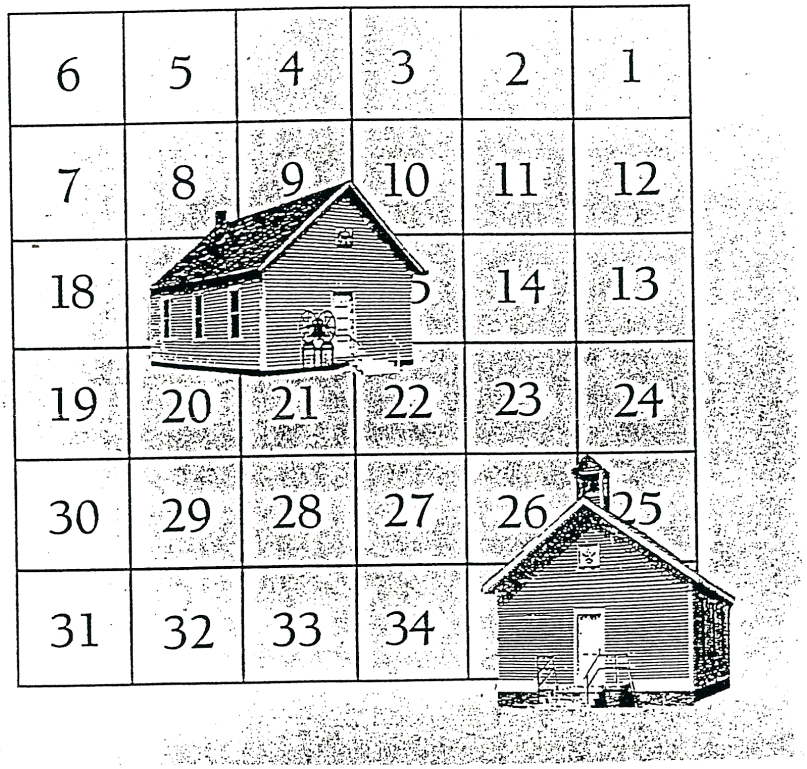
History, Management, & Sustainable Use



frequently cloud viewing trust management from the system perspective. For example, in several states the trust's forest resources are managed by the same office that fights forest fires on rural private lands. Since fighting forest fires is an all-consuming task, foresters working on trust management are often diverted from administering trust programs to fighting fires, with the result that either needed trust management is not carried out or the offices are overstaffed in relation to what would be needed to manage only the trust's forestry activities. In another example, prices for oil and gas rose extremely rapidly in the late 1970s. Yet revenues from the production of oil and gas from state trust lands are put into the states' permanent funds, which in many states suffer from restrictions on the types of investments allowed. As a result, the dividends from the permanent funds have been much less than the increase in value of the oil and gas resources, had these been left in the ground.

Looking at the management of the individual resources in these two examples, you could say that each was being effectively managed: rural areas were being protected from forest fires, and the oil and gas being produced from trust lands brought vast amounts of money into the permanent funds. Nevertheless, to evaluate trust land management—as we do in Chapter 3—we must view the whole system. By looking at the trust as a system, rather than at the management of the individual resources, one observes that the forestry programs were not paying their way, and the state might have been better off to leave the oil and gas in the ground rather than lose its "real" value in the permanent funds. Persons attempting to assess a state's land trust management are often tempted to proceed piecemeal with their analysis, identifying a specific component of the trust and examining how well its management stands up "on its own." The most appealing aspect of this approach, obviously, is that it breaks the task up into seemingly coherent blocks without imposing an artificial order on the whole system. Unfortunately, however, piecemeal analysis neglects the interconnectedness of the trust's components. Even a component that is managed with exemplary skill and efficiency may mesh badly with other trust components; if so, the trust as a whole suffers, and the prevailing approach to management of the overall system and of the various subdivisions in place needs rethinking.

TRUST LANDS AS A PRODUCTION SYSTEM

Visualizing the Production System

The trust lands were granted to the states to provide support for public institutions. Because they have this purpose, the managing agencies, the lands and resources, the permanent funds, and the revenues these produce can be depicted as a single system geared toward attaining that goal. A diagram representing this general system is shown in Figure 2-1.

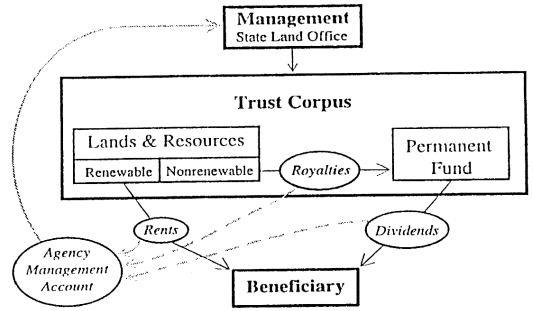


Figure 2-1. The trust production system.

Revenues from land and resources are treated differently depending on whether they are generated from the development of renewable as opposed to nonrenewable resources. We have therefore divided the lands into those two categories. Receipts from these resources are similarly divided into rents, royalties, and dividends, each emanating from a different part of the trust corpus, as shown by the arrows. The ultimate goal of trust management is to generate revenues to be received by the beneficiaries.

Figure 2-1 shows the components and flows of the trusts' production system in a very general sense. The exact path through which money travels before reaching the beneficiaries varies in different states according to three factors: the source of the revenues; the beneficiary of the lands that produced the revenues; and the deduction for managerial expenses, which varies among land types and beneficiaries. Funding for management of the trust resources also varies tremendously among the states, both as to amount and as to source. This ambiguity is represented by the ghostly gray arrow. In some (but not all) states, funding for trust resource management is deducted from receipts. This clearly colors management styles, priorities, and staffing levels in the different programs. The important thing is the relationship between the revenue flows in any specific resource and the overall management of the trust.

STATE LAND OFFICE ORGANIZATION, STAFF, AND FUNDING

State land offices[3] serve as the managing trustees for the land and resources depicted in Figure 2-1, and occasionally (or partially) as managers of the

permanent funds. There is wide variation among the states in how management is organized. Three aspects of organization seem most significant: structure of the state land office (what kind of a board, if any, is in place, how the agency head is selected, and where is the agency located within the state's natural resources bureaucracy); the amount and distribution of staff devoted to management of the various trust resources; and the level and source of funding for management activities. We set the stage for discussing the influence of organizational structure by describing the variation in how the trustee agencies are organized in different states.

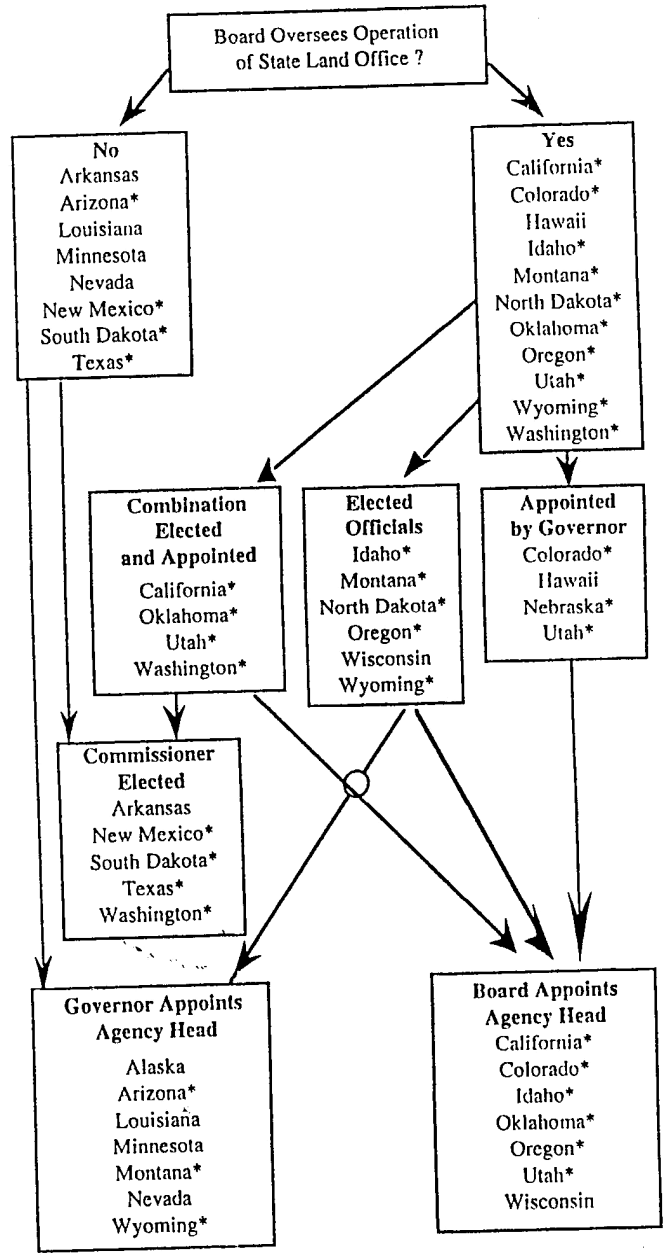
Organization in the State Government

In the basic model for trust land management, a board of land commissioners acts as trustee to oversee the operations of the state land office. Boards may range from a collection of ex officio constitutional officers (such as the governor, the state treasurer, and/or the superintendent of education) to panels composed entirely of members of the public who have been appointed in various ways. Some states do not have a board of land commissioners at all, but instead delegate sole authority for management of the trust lands either to an elected land commissioner or to an executive director appointed by the governor.

THE BOARD

Most states have some form of board of land commissioners to oversee state trust land activities. Figure 2-2 summarizes the composition and role of boards in the various states. We have found it difficult to relate patterns of management decisions to particular institutional arrangements. It appears that the most important factor is the degree of beneficiary involvement in the decision making. In six states, the board is composed of ex officio elected officials (usually including the state treasurer and/or state auditor). Three states—California, Oklahoma, and Washington—have boards composed of both elected and appointed officials, with the appointed member(s) designated by the governor. In four other states—Colorado, Hawaii, Nebraska, and Utah—the entire board is appointed by the governor.[4] Members of Utah's board represent specific groups, including oil and gas and ranchers, with only one ex-officio member representing the beneficiaries.

The boards' role and level of activity vary among the states, ranging from almost complete noninvolvement to active participation. The extreme hands-on case is Colorado, where there is no land commissioner and where the three board members serve essentially full time, running the office on a day-to-day basis. In Wyoming, the board (composed of the state's five elected officials), meets monthly but is largely uninvolved in the day-to-day matters of the land office; and in Washington the board's involvement is



* Core state in analysis.

Figure 2-2. Institutional relationships in state land office organization. *Source:* Souder & Fairfax, Western States Survey Responses (State Lands Project, Department of Forestry and Resource Management, University of California, Berkeley, December 1989), and WESTERN STATES LAND COMMISSIONERS ASSOCIATION, DIRECTORY (1992).

confined mainly to approval of land transactions. Arizona's board meets only to hear appeals of land office decisions, and has no other powers. In Texas and Washington, the commissioner of state lands must obtain board approval for certain types of decisions (primarily land sales and exchange) but cannot be removed by the board. At the other end of the spectrum, in New Mexico and South Dakota, the elected commissioner acts without board oversight.

THE AGENCY HEAD

The agency head may be elected, appointed by the board, or appointed by the governor. Again, it is difficult to trace particular outcomes to particular methods of selection for commissioners. The power of the commissioner to influence decisions varies widely among the states, and the means of selecting this officer appears to be only one of the relevant variables. Figure 2-2 indicates which states proceed by which selection method. Five states—Arkansas, New Mexico, South Dakota, Texas, and Washington—have elected land commissioners. In states where the commissioner is appointed, some responsiveness to the appointer is to be expected. Where the governor appoints (Arizona, Montana, and Wyoming), the state land office can be seen as an instrument of state executive control. Where the commissioner is appointed by the board (Nebraska), the power of the executive head depends on the amount of oversight exerted by the board.

The line of authority above the agency head may also be significant in the choice of management strategies. New Mexico's commissioner is elected, has no board oversight, and has an independent agency, giving that official a large measure of autonomy.[5] The commissioner may be directly responsible to the executive or may be indirectly responsible through intervening agency heads. The latter situation prevails in Colorado, where the board has fought turf battles with its umbrella agency over staff positions, oversight, and other administrative issues.[6]

WHERE THE LAND OFFICE FITS IN STATE GOVERNMENT

Another variable affecting the trustee's ability to focus on trust management is state administrative structure: is the state land office an independent agency, or is it included within the structure of another, larger agency? Three administrative patterns emerge in the various states: the state land office is totally independent of other state agencies; the state land office is independent but is administratively overseen by a larger agency; or the state land office is functionally integrated into another agency, sharing facilities and staff. In every state except Washington, the land office is independent of other agencies. Only in New Mexico, however, is this independence complete (except for oversight by the attorney general); all the other states impose some administrative superstructure over the land office.

Power and management emphasis may be diffused if the agency managing state trust lands has other responsibilities as well. Diversion of trustee attention may occur when an activity that the state land office manages requires significant commitments of personnel who would otherwise be contributing to trust land management activities (such as fire fighting) or when personnel staffing decisions focus on an area other than trust land management and these people subsequently move into positions of responsibility for the trust.[7] States combine various other resource programs with state trust land management. Arizona, Colorado, Idaho, Montana, Utah, Washington, and Wyoming all combine private forest regulation and management responsibilities with trust land management; and with the exception of Colorado, all these states' land offices are also responsible for forest fire protection. Similarly, four states—Idaho, Montana, New Mexico, and Washington—include oil and gas drilling permits and accounting, and mining regulation and reclamation in the state land office. In Wyoming, the state land office manages farm loans; while in Arizona, California, Idaho, Oregon, Utah, and Washington, sovereign lands (which include the beds of navigable waterways, lakes, and the inner coastal shore) are managed by the trust land office.

The relative power of the land office in state policy decisions compared to other state agencies is important. Total independence, while it allows focus on trust goals, may weaken the trustee politically. Thus, while New Mexico's land commissioner is independent, the office appears not to be terribly powerful in disputes with the state engineer over water management. This is a characteristic feature of trust land water management, which we discuss in Chapter 7. The question here is one of balance: a small, independent agency that deals exclusively with trust lands issues may be focused on beneficiaries but lacking in bureaucratic allies and therefore vulnerable in state-level administrative politics.

Staffing in State Land Offices[8]

Although the structure and organization of the different state offices are important, staffing is probably the most interesting and informative variable to look at. Because it constitutes by far the largest operating expenditure, staffing provides an important measure of management priorities in our analysis in the next chapter, when we move from a production system to a production function. Here, we simply discuss the allocation of staff to different resource management functions.[9] Table 2-1 shows the staffing amounts and patterns for the various states.[10]

Resource-specific staffing patterns for the states are provided in Table 2-1 for each of four broad staffing categories: renewable resources; nonrenewable resources; land sales and exchanges; and administration. The table

ABLE 2-1. State trust land office staffing patterns, expressed in terms of full-time equivalent ·mployees (FTEs)

'rogram	AZ	CA	CO	ID	MT	NB	NM	ND	OK	OR	SD	TX*	UT	WA	WY
:enewable resources															
Cropland and grazing															
Professional	15.5	1	5	12	10	15	4	3	24	2	1	2	7	46	5
Clerical	5		5	2	2	1	9	1	5	0.5		0	4	4	5
Forestry															
Professional	38.5	2	1	51	48					65.3	0.1		1	358	7.5
Clerical	3	1		8	6									40	6
Commercial leasing and development															
Professional	8	1	1	4	1.5		4		1	2		3	7	16	
Clerical	2		1	1	0.25		4		0	1		1	4	2	
lonrenewable resources															
Mining leasing															
Professional	8	3.3		3	1						0.5	1	2	6	
Clerical				1	1						0.5	0	1	0.5	
Oil and gas leasing															
Professional		0.2	2	3	1	1	6	1	8	1	1	14	2	6	14
Clerical			3	1	1		8	2.25	4	0.5		1	1	1	10
and sales and miscellaneous															
Land exchanges															
Professional	10	2	5	3	2.25		3			14	0.75	6	1		
Clerical	2	0		2	0.75	1	3				0.25	0		1.5	
Other program management															
Professional	26	3.5	1		4.5						0.5	21			
Clerical	2		2.5		2						0.5	0			
\dministrative															
Revenues management															
Professional			2	2	1.5	2	6	2	20	6	1	2	4	5	1.5
Clerical			4	4	2.25	2	4	0.75	16	2		0	4		1.5
Overall administrative personnel															
Professional	25	6.6	1	4	2.5		15	1	10	9	1	8	7	104	1.5
Clerical	5			4	1.5			1	5	2		2	2	15	1
:ivil service exempt	5	1	0	3	0		8		1	8			1	0	4
'otal FTEs	150	25.4	37	104	84.5	25	66		93	110.3	8.1	61	59	736	53

*Texas data is for headquarters office, trust land management only. Field positions are not included. Total General Land Office staff is 542 FTEs.

reports the number of full-time equivalent (FTE) employees in professional and clerical positions in each of the four categories. The renewable resources category provides staffing information broken down into three resources: cropland and grazing, forestry, and commercial leasing and development. The data for nonrenewable resources management fall into one of two sub-

categories: oil and gas leasing, and mineral leasing. Oil and gas leasing was separated from other mineral leasing activities because of its importance as a source of revenues in many states. The second category—mineral leasing—includes all other subsurface leasing activities, such as for coal, hard-rock minerals, and geothermal. Staffing in land sales and exchanges is also reported in two subcategories: land exchanges and appraisals, and other program management. Land exchanges are very staff-intensive and typically do not produce immediate revenues for the trust. "Other program management" refers to staff working in land sales and easements, and various land-based record-keeping activities. The final program area—administration—comprises two specific areas: revenues management, and overall administrative personnel. Revenues management includes accounting and auditing staff. Overall administrative personnel generally includes the "front office" staff—usually the director and commissioner, public relations, and shared secretarial and other support staff.

The patterns in Table 2-1 show that in many states staffing is focused on a single resource. In Idaho, Oregon, and Washington, this resource is timber; in Texas, it is oil and gas. This is to be expected, since these resources provide the bulk of the revenues in these states. In Chapter 3 we emphasize the amount of staff relative to the revenues received as one way to judge the effectiveness of trust management. Viewed as part of the production system, the amount of staff in each resource management program indicates how important the management of that resource is in relation to others within the trust.

Funding State Land Office Management

How the agency is financed affects and is affected by the resource revenues from the trust land base. States use variants of four basic processes for funding state land office activities: all land office functions may be funded by appropriations from the state legislature; management may be funded by a percentage of trust land surface revenues; management activities may be funded by a percentage of both surface and subsurface trust land revenues; or management may be funded by a combination of receipts and general fund appropriations. Table 2-2 shows the mechanisms each state uses to fund its land office management.

The most common method of funding management is for a percentage of revenues from renewable resource receipts to be deducted prior to distribution to the beneficiaries.[11] In Oregon, only renewable resource revenues are used to fund the operations of the Department of Forestry (and the Oregon Division of State Lands, for nonforested state trust lands). The split in revenue between county trust lands and state school and institution trust lands in Oregon differs. The Oregon Department of Forestry receives 36¼ percent of the revenues from the county forest lands,[12] but it recovers only administrative costs for forestry man-

TABLE 2-2. State land office funding mechanisms

Funding Mechanism	AZ[a]	CA[b]	CO[c]	ID[d]	MT	NB	NM[e]	ND	OK	OR[f]	SD	TX	UT[g]	WA[h]	WY[i]
Funding from revenues?	No	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	No	No	Yes	Yes	Yes
% of disbursable income			10%	10%	2.5%		100%	10%	6%	36¼%			20%	25%	25%
% of royalty income			10%						6%				20%	25%	
Land sales income included?			10%										No	25%	
% of permanent fund interest								10%	6%	Yes			20%		
Cost recovery (net distributed)		Yes								Yes					
State land office funded by direct appropriation?	Yes			Yes		Yes	No				Yes	Yes		No	Yes
Appropriated by legislature?		Yes	Yes	Yes			No[j]	Yes	Yes		Yes	Yes	Yes	No	Yes

Notes:

a. Based on Arizona's response to survey.
b. California P.R.C. § 6217.5 and § 6217.7 for revenue types and cost recovery.
c. Based on C.R.S. § 36-1-145. Funds appropriated by legislature, § 36-1-145(2b).
d. *Evans v. Van Deusen* 31 Idaho 614, 174 P. 122 (1918). Idaho management account's 10% must be used for the same program where the funds were generated—i.e., timber for timber—and can't be shifted among programs.
e. N.M.S.A. § 19-1-11, Amended 1989, ch. 15 § 1. Previously 20% of disbursable income was available for management expenses.
f. Part of permanent funds can be used to improve land values. Oregon Constitution Article VIII § 2 and O.R.S. § 273.115. The 36¼% management fee is for county forested lands, on a cost-reimbursable basis between the Department of Forestry and the Division of State Lands (Oregon Department of Forestry, Forest Log 59(1) [1989] at 6). Other state trust lands are managed on a cost recovery basis.
g. Based on U.C.A. § 65A-5-1.
h. Up to 50% of revenues from county forest lands obtained by gift or purchase (Washington Department of Natural Resources, Proposed Forest Lands Management Plan 1984–1993 [1983], at 29).
i. W.S.A. § 9-4-305(c) designates the income fund; § 39-4-307 says that 25% goes to the general fund with the exception of the university and fish hatchery trust lands. The legislature then appropriates operating funds for the state land office from the general fund.
j. Expenditures from maintenance account at sole discretion of the State Land Office (1953–54 Op. Att'y Gen. No. 5781).

Source: Western States Survey Responses at 4, and state statutes.

agement on the common school lands.[13] In the case of county forest lands, receipts from land sales and rights-of-way are used to purchase other lands or are returned to the county of origin.

In other cases, such as Washington, agency management expenses are also funded through a percentage of nonrenewable resource receipts.[14] In Washington, the Department of Natural Resources receives up to 25 percent of the revenues from both renewable and nonrenewable resources, including land sales, for its operational cost accounts for the state trust lands.[15] On Washington's Forest Board lands, up to 25 percent of revenues from reverted lands and up to 50 percent of revenues from board lands obtained by gift or

purchase by the board can be used for management expenses.[16] The receipts in these accounts must be appropriated by the legislature before they are available for expenditure. Proceeds from sales of Washington Forest Board lands are used to buy replacement lands.[17]

Finally, agency management costs may be met directly from the state general fund, as is the case in Idaho and Montana (with small exceptions). Management cost recovery in Idaho includes a forest improvement program to maximize the revenue production from state-owned forest lands, which levies a 10 percent fee on gross revenues from timber sales on these lands to fund the program.[18] The remainder of the funds are deposited in the endowment fund; management operations of the Idaho Department of Lands are funded from direct legislative appropriation.[19] Montana's resource development program is funded by an amount not to exceed 2½ percent of the income received from trust lands, which, while primarily used in range and cropland development projects, may also be applied to timber improvement projects.[20] The remainder of Montana's forestry management activities are funded through direct legislative appropriations of general funds.[21] The Arizona and Wyoming land offices receive all their operating funds from annual appropriations; consequently, they must work first through the executive office with budget requests, and then through the legislature for appropriations. In Wyoming's case, the state land office budget has been reduced by 30 percent in the last three years, irrespective of the effects this may have on trust responsibilities.

THE TRUST CORPUS

A crucial distinction between state trust land and other public resource management programs is that the states' assets have two components: granted lands and resources that remain in state ownership; and permanent funds that were established (frequently at statehood) to hold in trust receipts from land sales and leasing of nonrenewable resources. We look at these two components individually in the subsections that follow.

Trust Lands and Their Uses[22]

LAND OWNERSHIP

In Chapter 1 we discussed the original grants of land to the states. Here we look at what remains after almost 200 years of management. Figure 2-3 shows the current surface land ownership in trust land states and the percentage of the original grants still in state ownership. Three fairly distinct groups of states can be differentiated on the basis of the extent of land ownership. Alaska, Arizona, Montana, and New Mexico are the major holders, each retaining title to more than 5 million acres.